



Commonwealth of Massachusetts

State Ethics Commission

One Ashburton Place, Room 619, Boston, MA, 02108
phone: 617-727-0060, fax: 617-723-5851



CONFLICT OF INTEREST OPINION EC-COI-91-7

You are an Associate Professor at a State College (College). In that capacity, you teach a course to College students involving the instruction and coaching of elementary school students. As part of your faculty position, you also teach physical education in K-6 classes at a campus center (Center) which is part of the College. In addition to your faculty position, you coach cross-country and track teams in the fall and winter semesters. Your part-time coaching position is a separate, paid position, funded by the Athletic Trust Fund (Fund). Generally your faculty responsibilities do not coincide with your coaching schedule. For instance, track meets are usually held on weekends and your coaching takes place after your faculty duties. The exception to this arrangement may occur if a national track meet is scheduled out of town. In such a case, you would reschedule your class or arrange for a substitute instructor and would take personal leave to make such a trip and if necessary, you would pay for the substitute instructor.

QUESTIONS:

Does your financial interest in your compensated cross-country and track coaching position qualify for an exemption from G.L. c. 268A, s.7.

ANSWER:

Yes.

DISCUSSION:

In your capacity as an associate professor at the College, you are considered a state employee of a state agency within the meaning of G.L. c. 268A. See, G.L. c. 268A, s.1(p),(q).¹ As a state employee, you are subject to the restrictions of G.L. c. 268A, s.7, which prohibits a state employee from having a financial interest, direct or indirect, in a contract made by a state agency. *Quinn v. State Ethics Commission*, [401 Mass. 210](#) (1987). By virtue of your receipt of compensation from the Fund for your services as a college cross-country athletic and track coach, you have a financial interest in a contract made by a state agency.

Prior to 1980, both the Commission and Attorney General concluded that G.L. c. 268A, s.7 prohibits a state employee from performing paid teaching services at a state college or university. EC-COI-79-9; Attorney General Conflict Opinion No. 844. In response to these conclusions under G.L. c. 268A, s.7, the General Court enacted St. 1980, c. 303 which established the following exemption from s.7:

This section shall not prohibit a state employee from teaching in an educational institution of the commonwealth; provided, that such employee does not participate in, or have official responsibility for, the financial management of such educational institution; and provided, further, that such employee is so employed on a part-time basis. Such employee may be compensated for such services, notwithstanding the provisions of section twenty-one of chapter thirty.

Since the enactment of this exemption, state employees have received compensation for teaching at state colleges and universities, with the exception of those employees who hold influential positions affecting the financial management of the institutions at which they intended to teach. The Commission has applied the exemption language to cover teaching services in state and community colleges, EC-COI-81-85, as well as in institutions which are required by state law to provide education and training. EC-COI-81-15 (correctional facility), 81-39 (Criminal Justice Training Council). On the other hand, the

Commission has found the exemption inapplicable to state employees who have official responsibility for the financial management of the teaching institution (EC-COI-81-126; 83-90) or whose services are conducted for state agencies which are not comparable to educational institutions. EC-COI-81-40; 81-95.

While the Commission has not directly construed the meaning of "teaching" under the exemption, the Commission found in EC-COI-82-158 that a state employee who performed paid services in the preparation of a college catalogue did not qualify for the teaching exemption. The instances in which the Commission has applied the exemption have, without exception, involved instruction to students in an academic classroom setting.

In 1990, the Massachusetts Teachers Association filed legislation to clarify the meaning of the term "teaching" under the exemption. The legislation, An Act Further Regulating Employment in Higher Education, was enacted as St. 1990, c. 487 and provides that the state employee services eligible for the exemption will include teaching as well as "performing other related duties."² In declaring the act to take effect immediately upon signing, the Governor stated that the act would "enable teachers to perform related duties such as part-time coaching and teaching" See, Statement of the Governor, December 31, 1990, filed with the Secretary of State in connection with the enactment of St. 1990, c. 487.

We conclude that the recently amended exemption to G.L. c. 268A, s.7 permits a state employee to perform instructional services both within and outside of the traditional academic classroom setting at a state educational institution as well as services which are directly related to such instruction. The clarifying language reflects an intent to assure that the exemption covers instructional services performed outside of the classroom. In particular, we regard as persuasive the statement of the Governor that the amendment was intended to cover coaching. It is well settled that the message of the Governor in connection with the consideration and enactment of a bill is relevant to assist in the construction of a statute. *Taplin v. Town of Chatham*, [390 Mass. 1](#) (1983); *MacCuish v. Volkswagonwerk A.G.*, 22 Mass. App. 380 (1986); *Sands, Sutherland Statutory Construction*, s.48.05 (4th Ed.).

With respect to the type of services implicated by the amended exemption, we conclude that, while the General Court intended more flexibility than under the original 1980 amendment, the permissible services are not unlimited and must be directly related to the content of instruction and how that content is taught. Thus, services related to the development of curriculum, the selection and evaluation of teachers, course scheduling, and the advising of students in connection with courses would fall within the statutory exemption. On the other hand, purely administrative or custodial functions such as record-keeping, facility management, financial and budgetary services and personnel administration, while indirectly supporting the ultimate educational objectives of the institution, do not have a sufficiently direct relationship to instruction and therefore do not qualify under the amended exemption. In construing this exemption, we note our customary reluctance to expand unduly language contained in statutory exemptions to G.L. c. 268A. See, EC-COI-87-2 citing *Department of Environmental Quality Engineering v. Town of Hingham*, 15 Mass. App. Ct. 409, 412 (1983).

Based on the foregoing, we conclude that your cross-country athletic and track coaching services for the College qualify for an exemption under G.L. c. 268A, s.7, inasmuch as they are performed on a part-time basis and you do not have responsibility for the financial management of the College. We would caution you, however, to maintain accurate records of your coaching activities and to arrange to take personal or vacation leave if your coaching activities overlap with your regular College employment schedule.

Under G.L. c. 268A, s.23(b)(2), a state employee may not use his official position to secure for himself any unwarranted privileges or exemptions of substantial value. By receiving dual compensation from the College for the same hours, you will violate s.23(b)(2). EC-COI-86-11 (a state employee may not receive additional compensation on an educational leave day for which he already receives regular state compensation). Your arrangement under which you take personal leave for your cross-country and track coaching must therefore be consistent with s.23(b)(2). In particular, it is not appropriate to reschedule regular classes or to arrange for substitute instructors to accommodate your track meet schedule.

DATE AUTHORIZED: March 13, 1991

¹ Because your faculty contract expressly permits you to engage in professional activities during customary working hours, you are also considered a "special state employee" under G.L. c. 268A, s.1(o). EC-COI-81-64. Your status as a special state employee will have no bearing, however, on the application of G.L. c. 268A to your facts.

² We express no opinion as to the merits of this amendment.